

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARISE FOR SOCIAL JUSTICE;
;OISTE?; NEW ENGLAND STATE-AREA
CONFERENCE OF THE NAACP;
REV. TALBERT W. SWAN, II;
NORMAN W. OLIVER; DARLENE
ANDERSON; GUMERSINDO GOMEZ;
FRANK BUNTIN; RAFAEL RODRIQUEZ;
and DIANA NURSE

Plaintiffs,

v.

CITY OF SPRINGFIELD and SPRINGFIELD
ELECTION COMMISSION,

Defendants.

Civil Action No. 05-30080 MFP

**PLAINTIFFS' MOTION TO SET FIRM DEADLINE
FOR TRIAL AFFIDAVITS**

Plaintiffs hereby move to set a firm and final deadline of 6:00 pm Wednesday, February 7, 2007, for the parties to file trial affidavits.

1. By Order dated January 19, 2007, the Court set February 2, 2007, a date agreed-upon by the parties, as the deadline for the filing of trial affidavits. Plaintiffs filed 28 affidavits on February 2, 2007, and one additional affidavit on February 5, 2007. Defendants filed no affidavits on February 2 and eight affidavits on February 5.

2. At the Pre-Trial Conference on January 26, 2007, both parties represented that they were on track to meet the February 2 deadline, except possibly for a few "straggler" affidavits. On February 1, 2007, defense counsel represented in an email to plaintiffs' counsel that defendants' affidavits would be filed on February 2, except for perhaps "4 or 5" that would

not be completed until February 5. Plaintiffs' counsel responded that plaintiffs might find themselves in the "same boat," but were still trying to make the deadline.

3. In fact, although defendants listed over forty witnesses on their witness list, they filed no affidavits within the Court's deadline, and they filed only eight affidavits on February 5. Defendants have not sought leave to file late.

4. With trial fast approaching, defendants' unexcused delay in filing trial affidavits is cutting unfairly into plaintiffs' preparation time. To the extent that defendants are tailoring their affidavits in response to plaintiffs' timely filed affidavits, that too prejudices plaintiffs unfairly. It is beyond comprehension why defendants could not file a single affidavit by February 2. It is particularly incomprehensible why defendants could not file their expert's affidavit by February 2.

5. Accordingly, plaintiffs request that the Court set a firm and final deadline of 6:00 pm Wednesday, February 7, 2007, for the filing of trial affidavits by either party. Plaintiffs reserve the right to move to strike all or portions of any affidavits that may be filed before the deadline.

WHEREFORE, plaintiffs respectfully request that the Court set a firm and final deadline of 6:00 pm, Wednesday, February 7, 2007, for the filing of trial affidavits by either party.

CERTIFICATION PURSUANT TO LOCAL RULE 7.1

The undersigned hereby certify that on February 6, 2007 they attempted to confer with counsel for defendants in good faith to narrow or resolve the issues presented by this motion, and counsel for defendants repoded that he was unable to assent to the motion.

Respectfully submitted,

ARISE FOR SOCIAL JUSTICE; ¿OISTE?; NEW
ENGLAND STATE-AREA CONFERENCE OF THE
NAACP; REV. TALBERT W. SWAN, II; NORMAN W.
OLIVER; DARLENE ANDERSON; GUMERSINDO
GOMEZ; FRANK BUNTIN; RAFAEL RODRIQUEZ;
and DIANA NURSE

By their attorneys,

/s/ Paul E. Nemser
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LAWYERS' COMMITTEE FOR CIVIL RIGHTS
UNDER LAW OF THE BOSTON BAR ASSOCIATION
294 Washington Street, Suite 443
Boston, MA 02108
(617) 988-0609

Dated: February 6, 2007

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Motion to Set Firm Deadline for Trial Affidavits was filed electronically with this Court on this 6th day of February, 2007 and that all parties will be served via the Court's electronic filing system.

/s/ Paul E. Nemser
Paul E. Nemser (BBO #369180)